

**THE STATE OF NEW HAMPSHIRE**  
**SUPREME COURT**

**In Case No. 2004-0273, Scott Thurston v. Barbara Roy, the court on August 12, 2005, issued the following order:**

The plaintiff, Scott Thurston, appeals a decision of the trial court to direct a verdict for the defendant, Barbara Roy, at the close of the plaintiff's case. He contends that the trial court applied an incorrect legal standard in granting the motion for directed verdict. We affirm.

"A motion for directed verdict should be granted only when the sole reasonable inference that may be drawn from the evidence, which must be viewed in the light most favorable to the nonmoving party, is so overwhelmingly in favor of the moving party that no contrary verdict could stand." Randall v. Benton, 147 N.H. 786, 788 (2002) (quotations omitted). The plaintiff filed an action against the defendant alleging abuse of process, malicious prosecution and intentional infliction of emotional distress. We have not been provided with a copy of the actual writ. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004) (burden on appealing party to provide this court with record sufficient to decide issues raised on appeal).

"To succeed in an action for malicious prosecution, the plaintiff must prove that he was subjected to a criminal prosecution instituted by the defendant without probable cause and with malice, and that the criminal proceeding terminated in his favor." Hogan v. Robert H. Irwin Motors, Inc., 121 N.H. 737, 739 (1981) (quotations omitted). "An action for abuse of process differs from an action for malicious prosecution in that the latter is concerned with maliciously causing the process to issue, while the former is concerned with the improper use of process after it has been issued." Business Publications v. Stephen, 140 N.H. 145, 148 (1995) (quotation and emphasis omitted). "One who by extreme and outrageous conduct intentionally causes severe emotional distress to another is subject to liability for that emotional distress." Konefal v. Hollis/Brookline Coop. School Dist., 143 N.H. 256, 260 (1998).

The parties do not disagree that the plaintiff's civil action was based on criminal proceedings filed after a September 15, 2001 incident with his wife. The evidence before the court included that the Milton Police Department filed a simple assault charge against the plaintiff after the September 2001 incident, that the plaintiff was convicted in the district court and that he stated in a divorce petition dated approximately eleven days after the assault that the parties had mutually assaulted each other on September 11, 2001. Based on

the limited record before us, we find no error in the trial court's directing a verdict in favor of the defendant.

The defendant's request for attorney's fees on appeal is denied. See Supreme Court Rule 23 (authorizing award of attorney's fees in extraordinary cases if appeal is frivolous or in bad faith).

Affirmed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,  
Clerk**